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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 556

W. B. WORTHEN COMPANY, BANKERS, AS TRUSTEE, EX REL. THE BOARD OF COMMISSIONERS OF STREET IMPROVEMENT DISTRICT NO. 513 OF THE CITY OF LITTLE ROCK, ARKANSAS, ET AL.,
Appellants,

vs.

COBURN C. KAVANAUGH.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

STATEMENT AS TO JURISDICTION.

Jurisdiction.

The jurisdiction of this Court is invoked under Title 28, Section 344, United States Code Annotated, Section 237 Judicial Code and amendments, including the Act of February 13, 1925, Chapter 229, 43 Stat. 936, the Act of January 31, 1928, Chapter 14, 45 Stat. 54, and the Act of April 26, 1928, Chapter 440, 45 Stat. 466.

Statutes Involved.

The statutes of Arkansas, the validity of which under the Constitution of the United States is involved, follow. These statutes amend or repeal certain laws affecting the enforcement of the collection of assessments in improvement districts. The substance of the laws amended or repealed is given in parenthesis.

Act No. 278 of the Acts of Arkansas, 1933, page 868:

> SECTION 1. Section 5673 of Crawford and Moses' Digest of the Statutes of Arkansas is hereby amended to read as follows:
>
> 5673. *Penalty.*—If any assessment made under this act shall not be paid within ninety days after the time mentioned in the notice published by the Collector, the Collector shall add thereto a penalty of three per centum, and shall ninety days thereafter, return a list of the property on which the assessments have not been paid, to the board of improvement as delinquent."

(Section 5673 provided that if the assessment were not paid within the time mentioned in the notice published by the Collector—30 days from the date of the notice, Section 5671—the Collector should add a penalty of twenty per cent and should at once return a list of the property on which the assessments had not been paid to the Board of Improvement as delinquent. Section 5674, which is not amended, provided that the Board should straightway cause a complaint in equity to be filed to foreclose the lien of the assessment.)

> "SECTION 2. Section 5678 of Crawford and Moses' Digest of the Statutes of Arkansas is hereby amended to read as follows:
>
> 5678. *Default decree.*—Summons shall be issued and the defendant shall be required to appear and respond

within six months after service; and upon default a decree shall be rendered against such property for the amount of such assessment and penalty."

(Section 5678 provided that the defendant should answer within five days after service and upon default, a decree should be rendered against his property for the amount of the assessment, penalty, costs and an attorney's fee.)

"SECTION 3. Section 5679 of Crawford and Moses' Digest of the Statutes of Arkansas is hereby amended to read as follows:

5679. *Constructive service.*—If the sheriff, or other officer, to whom the writ may be directed, shall return that the defendant is not to be found in his county, or if the owner is stated in the complaint to be unknown, service shall be made by affixing a copy of the summons to the property assessed, or to some part thereof, for six months, and by publishing a copy of the summons in some daily or weekly paper, published in the city, for one insertion, and the cause shall be made ready for hearing within six months after such publication, and a decree shall be rendered as in case of actual service."

(Section 5679 provided for an answer in fifteen days on constructive service.)

"SECTION 4. Section 5684 of Crawford and Moses' Digest of the Statutes of Arkansas is hereby amended to read as follows:

5684. *Condemnation decree—sale.*—The suit shall be brought in the name of the board of improvement, and, in its decree of condemnation, the court shall direct that, if the sum adjudged shall not be paid within twelve months, the property shall be sold by a commissioner, appointed for that purpose, upon six months' notice."

(Section 5684 provided that the condemnation decree should provide only ten days for payment of the amount adjudged to be due and twenty days' notice of sale.)

"SECTION 5. Sections 5686, 5687, 5688 and 5689 of Crawford and Moses' Digest of the Statutes of Arkansas are hereby repealed."

(Section 5686 to 5689 provided that appeals should be taken to the Supreme Court within twenty days and the hearing advanced. Under the rules of the court, the appeal would be heard in three weeks. The general statutes allow six months for appeal, and under the rules of the court a hearing cannot be had for at least seventy-seven days after the appeal is filed, even if the court were up with its docket.)

SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed. This act being necessary for the public peace, health and safety, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Act No. 252 of the Acts of Arkansas, 1933, page 790:

"SECTION 1. It is here provided that the owner of any land hereafter sold for any delinquent taxes or assessments of any municipal improvement district existing for any purpose whatever, shall have the right to redeem same from such sale at any time thereafter within four years by the payment of the sale price thereof and six (6) per cent interest per annum thereon to the purchaser or his assignee.

SECTION 2. All laws and parts of laws in conflict herewith are hereby repealed.

SECTION 3. It is hereby ascertained as a fact that the present law does not provide an adequate period of redemption from land sales for delinquent taxes in

municipal improvement districts and by reason thereof many landowners affected are now threatened with the loss of their homes and lands and therefore an emergency exists and this Act should be immediately in full force and effect from and after its passage, the public peace, health and safety requiring it."

(This Act in effect amends Section 5644 which provided for 10% interest on the purchase price on redemption. Section 5644 also provided for redemption in five years which we contend was amended by Section 2 of Act 359 of 1925 reducing the time to two years.)

Act 129 of the Acts of Arkanas, 1933, page 375:

"SECTION 1. Section 5642 of Crawford and Moses' Digest is hereby repealed.

SECTION 2. It is hereby ascertained and declared that a large proportion of the property owners of the State are in a precarious condition financially, that a great number of foreclosure proceedings have been instituted, or are about to be instituted, by Commissioners of various improvement districts for foreclosure of delinquent assessments, and decrees will be entered approving sales under such foreclosures resulting, during the period of redemption, in the loss of possession by the owners thereof, of countless homes and many parcels of land, whereby many people will be deprived of shelter and a means of livelihood, thereby endangering the peace, health and safety of a multitude of the citizens of the State, and an emergency is therefore hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval by the Governor."

(Section 5642 gave the purchaser at the foreclosure sale the right to possession pending redemption without accountability for rents.)

Summary of Changes Made by Acts 278, 252 and 129.

The time to file suit to enforce collection of delinquent assessments is extended from *thirty days* after they become due to *six months*, the time to answer from *five days* to *six months*, the time for payment of the amount adjudged to be due by the decree from *ten days* to *twelve months*, and the notice of sale, if payment is not made, from *twenty days* to *six months*. The time in which the sale can be had is thus extended from *sixty-five days* to *two years and six months*.

The penalty for failure to pay assessments when due is reduced from *twenty* per cent to *three* per cent and the period for redemption after sale is extended from *two* years (as contended by us) to *four* years. The interest to be paid on the purchase price on redemption is reduced from *ten* per cent to *six* per cent and the right of the purchaser to possession pending redemption *without accountability for rents* is taken away.

The time to appeal is extended from *twenty days* to *six months*. The right to have the appeal advanced for hearing and heard in *three weeks* is taken away, and a hearing cannot be had for at least *seventy-seven days* after the appeal is filed, even if the court were up with its docket.

Date of Decree and Presentation of Petition for Appeal.

The decree of the Supreme Court of Arkansas appealed from was entered October 15, 1934. The application for appeal was presented to the Honorable C. E. Johnson, Chief Justice of the Supreme Court of Arkansas on November 12th, 1934.

Statement of the Case.

This suit was brought by the appellants under the laws of Arkansas to enforce the collection of assessments, which

had been duly returned as delinquent, in Street Improvement District No. 513 of Little Rock, which was organized and sold bonds in 1930, and whose bonds were in default. Several delinquent property owners were made defendants, but final decree was taken against C. C. Kavanaugh, Trustee, only and he is the appellee here. The appellants contended that under the above-referred-to sections of Crawford & Moses' Digest in force when the bonds were sold, which became a part of the contract for their sale and purchase and on the faith of which the bonds were purchased, a decree should be entered charging the appellee's property as delinquent with the amount of his assessments due, together with a penalty of twenty per cent, costs and a reasonable attorney's fee; that the decree should also provide that the property be condemned and sold upon twenty days' notice, if payment of the amount adjudged to be due were not made in ten days, for redemption within two years by the payment of the purchase price and ten per cent interest and for possession in the purchaser at the sale without accountability for rents pending redemption. The appellee in his answer admitted that the appellants were entitled to a decree condemning his property to be sold for the amount of his delinquent assessments, but contended that the said sections of Crawford & Moses' Digest, relied on by the appellants, had been amended or repealed by the above-referred-to Acts 278, 252 and 129 of 1933, and that under these Acts the decree should provide for a penalty of only three per cent, no attorney's fees, twelve months for payment, six months' notice of sale, redemption within four years by the payment of the purchase price and only six per cent interest, and should not give the purchaser at the sale the right to possession without accountability for rents pending redemption. The appellants contended that the remedies given by the laws relied on by them became a part

of the contract for the sale and purchase of the bonds, and therefore said Acts 278, 252 and 129, which purported to amend or repeal them so as to deprive the bondholders of any effective remedy for the enforcement of their rights, were void as to the bonds of the District, which were sold before these Acts were adopted, because in contravention of Article I, Section 10, Clause 1 of the Constitution of the United States, which forbids the passage of any law impairing the obligation of contracts, and the Fourteenth Amendment to the Constitution of the United States, which forbids any State to deprive any person of his property without due process of law. The trial court sustained the contentions of the appellee and entered a decree in accordance therewith. The Supreme Court of Arkansas affirmed the decree, holding that the changes in the remedies made by said Acts did not take away vested rights of the holders of the bonds, were not unreasonable and that the Acts did not contravene the said provisions of the Federal Constitution.

The following cases are believed to sustain the jurisdiction of this appeal:

Bronson v. *Kinzie*, 1 How. 311.
Von Hoffman v. *City of Quincy*, 4 Wall. 535.
Walker v. *Whitehead*, 16 Wall. 314.
Edwards v. *Kearsey*, 96 U. S. 595.
Memphis v. *United States*, 97 U. S. 296.
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Stearns v. *Minnesota*, 179 U. S. 223.
Duluth & Iron Range Ry. Co. v. *St. Louis County*, 179 U. S. 302,
W. B. Worthen Company et al. v. *Thomas*, 54 Sup. Ct. Rep. No. 15, page 816, decided May 28, 1934.

It is respectfully submitted that this Court has jurisdiction to hear this appeal.

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Little Rock, Arkansas.

(5695-C)